

From: [Burkholder Kurt](#)
To: [ANDERSON Jim M](#); [Lori Cora/R10/USEPA/US@EPA](#)
Cc: [Chip Humphrey/R10/USEPA/US@EPA](#); [Eric Blischke/R10/USEPA/US@EPA](#); [KEPLER Rick J](#)
Subject: RE: Portland Harbor
Date: 03/24/2008 10:31 AM

The ODFW statute (ORS 496) is it, Lori. The LWG memo accurately describes the purpose of the 'sensitive' designation.

-----Original Message-----

From: ANDERSON Jim M
Sent: Monday, March 24, 2008 9:23 AM
To: Cora.Lori@epamail.epa.gov
Cc: Humphrey.Chip@epamail.epa.gov; Blischke.Eric@epamail.epa.gov; ANDERSON Jim M; Burkholder Kurt; KEPLER Rick J
Subject: RE: Portland Harbor

Lori,
I thought it would be better for me to attach this link for you to review to ODF&W's web site re: T&E & sensitive species. Please call or reply with any questions.

<http://www.dfw.state.or.us/fish/species/>

Jim Anderson
Manager, DEQ Portland Harbor Section
ph: 503.229.6825
fax: 503.229.6899
cell: 971.563.1434

-----Original Message-----

From: Cora.Lori@epamail.epa.gov [<mailto:Cora.Lori@epamail.epa.gov>]
Sent: Monday, March 24, 2008 9:11 AM
To: ANDERSON Jim M
Cc: Humphrey.Chip@epamail.epa.gov; Blischke.Eric@epamail.epa.gov; ANDERSON Jim M; BURKHOLDER Kurt; KEPLER Rick J
Subject: RE: Portland Harbor

Kurt and Jim. Thanks for your quick input on this issue. Does Oregon have its own endangered species act? If so, how does the "sensitive species" designation fit into the scheme of listing?

Lori Houck Cora
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
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1200 Sixth Avenue
Seattle, WA 98101
(206) 553-1115
cora.lori@epa.gov

"ANDERSON Jim M"
<ANDERSON.Jim@deq.state.or.us>

03/21/2008 11:38 AM

To
"BURKHOLDER Kurt"
<Kurt.Burkholder@doj.state.or.us>
, [Lori Cora/R10/USEPA/US@EPA](mailto:Lori.Cora/R10/USEPA/US@EPA)

cc
"ANDERSON Jim M"
<Jim.M.Anderson@state.or.us>,
"KEPLER Rick J"
<Rick.J.Kepler@state.or.us>, [Chip Humphrey/R10/USEPA/US@EPA](mailto:Chip.Humphrey/R10/USEPA/US@EPA), [Eric Blischke/R10/USEPA/US@EPA](mailto:Eric.Blischke/R10/USEPA/US@EPA)

Subject
RE: Portland Harbor

Kurt,
I agree with your call. I think state rules are clear that risk posed to T&E species should be evaluated on an individual basis, & all other eco receptors on a population basis. Lamprey are designed by ODF&W as a "sensitive species", but our Cleanup Rules do not include "sensitive species" as part of, or in addition to T&E species.

Jim Anderson
Manager, DEQ Portland Harbor Section
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-----Original Message-----

From: BURKHOLDER Kurt
Sent: Thursday, March 20, 2008 3:45 PM
To: Cora.Lori@epamail.epa.gov
Cc: ANDERSON Jim M; KEPLER Rick J; Humphrey.Chip@epamail.epa.gov;
Blischke.Eric@epamail.epa.gov
Subject: Portland Harbor

Correct. Jim, please chime in if you have a different view.

-----Original Message-----

From: Cora.Lori@epamail.epa.gov [mailto:Cora.Lori@epamail.epa.gov]
Sent: Thursday, March 20, 2008 3:35 PM
To: Burkholder Kurt
Cc: ANDERSON Jim M; KEPLER Rick J; Humphrey.Chip@epamail.epa.gov;
Blischke.Eric@epamail.epa.gov
Subject: Re: Portland Harbor

Thanks, Kurt for your quick review. So does that mean that the pacific lamprey is not a list or protected species under state law and that it is not a species that the state would assess at the individual level in an ecological risk assessment?

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"Burkholder Kurt" <Kurt.Burkholder @doj.state.or.us > 03/20/2008 03:17 PM	Lori Cora/R10/USEPA/US@EPA cc "ANDERSON Jim M" <Jim.M.Anderson@state.or.us>, "KEPLER Rick J" <Rick.J.Kepler@state.or.us> Subject Portland Harbor
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Lori, the memo is accurate regarding Oregon's rules.

-----Original Message-----

From: Cora.Lori@epamail.epa.gov [mailto:Cora.Lori@epamail.epa.gov]
Sent: Thursday, March 20, 2008 3:16 PM
To: christopherburford@ctuir.com; cunninghame@gorge.net;
erin.madden@gmail.com; wbarquin@hk-law.com;
lisa.bluelake@grandronde.org; raygivens@givenslaw.com;
Katherine.pease@noaa.gov; Burkholder Kurt; KEPLER Rick J;
jeremy_buck@fws.gov
Cc: Humphrey.Chip@epamail.epa.gov; Blischke.Eric@epamail.epa.gov
Subject: Fw: Portland Harbor

Hello, LCT Folks. I am forwarding an email and memorandum send by Joan Snyder in which they argue that pacific lamprey should be not be assessed on the individual level in the ERA.

Kurt Burkholder: After you have time to look at this, I would like to talk about the lamprey's status under state law.

If any one has controverting legal analysis, please forward it on. My initial impression is that that EPA does not have a strong case for assessing pacific lamprey on an individual basis. Let me know if you would like to have a conference call.

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----- Forwarded by Lori Cora/R10/USEPA/US on 03/20/2008 03:07 PM -----

"Snyder, Joan"
<JPSNYDER@stoel.
com>
03/14/2008 03:24
PM

To
Lori Cora/R10/USEPA/US@EPA
cc
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"Albrich, Elaine"
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Subject
Portland Harbor

Hi Lori,

As I indicated in my voicemail message, the LWG Management Team wants to ensure that we do everything we can to prevent any log jams in the development of the RI/FS. One thing they have asked the LWG Legal Committee to do is to make sure that any legal issues are discussed with EPA as soon as they become apparent, so we can try to establish a common legal understanding of the issue. To make that happen, we asked the LWG Common Consultants to identify for us any technical issues they are dealing with that require resolution of some legal component.

The first one that has popped up is the issue of which species are assessed in the eco-risk assessment at the individual organism level. EPA's Problem Formulation document on the Baseline Ecological Risk Assessment identified three species, juvenile Chinook salmon, bald eagles and lamprey as "special status species" to be evaluated at the more conservative individual organism level. We agree that result may be appropriate for the Chinook and the bald eagles (at this time the bald eagle has been delisted federally, but still has "threatened" status under Oregon law). For the reasons discussed in the attached, it does not seem that would be the result under EPA guidance for lamprey, which previously was a candidate for ESA listing, but no longer is.

So, once you have a chance to look at this, could you please give me a call to talk about it? Thanks.

Joan P. Snyder
Attorney, Environmental Practice Group
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Portland, OR 97204
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(See attached file: Lamprey memo.PDF)

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